lawful sexual intercourse, but also as "continent." It follows, therefore, that a man may have an intention to seduce a girl so as to come within the meaning of the section although at the date of the man's intention, the girl had already had sexual intercourse. Illicit sexual intercourse must mean any sexual intercourse otherwise than in lawful wedlock.

Terrell J. in his charge to the jury upheld these contentions. The relevant passage from his summing up was as follows:—

"It is quite unnecessary that you should be satisfied that these girls were, either of them, virgins at the time that the accused took them away. Section 366 of the Penal Code says that this offence is committed if they were 'seduced to illicit intercourse.' Here 'seduced' is used as a general term, just as you might say that revolutionaries are 'seduced from their proper allegiance.' The word does not necessarily imply anything sexual at all. The sexual part of it is introduced by the words 'illicit intercourse.' The words of the section are 'seduced or forced.' That is, induced to illicit intercourse either by persuasion or by force. And so if the object of the accused was to persuade them to have illicit intercourse, then the section will cover it whether or not they had intercourse with him or anybody else on a former date. The object of the law is to protect small girls under age, if necessary against themselves, and to protect their parents. Because the girl has gone wrong on a previous occasion that does not mean that she has lost the protection of the law for ever afterwards. Therefore, the point for you to decide is whether there was this intention that he should have illicit intercourse."

Accused convicted and sentenced to 12 months' rigorous imprisonment on the 1st charge and 6 months' simple imprisonment on the 2nd charge; sentences to run concurrently.

Re CHOPS LOH KEE SENG AND LOH CHEE SENG

[A.C.J. (Deane J.) April 9, 1926]
[Singapore Bankruptcy No. 28 of 1914]

Bankruptcy — Order for examination of witness — Application to rescind — Jurisdiction — Ordinance No. 44 (Bankruptcy), ss.31(1), 90(1).

An order made under section 31(1) of Ordinance No. 44 (Bankruptcy) for the examination of persons capable of giving information respecting a debtor's dealings or his property may be reviewed, rescinded, or varied upon application made under section 90(1) of the Ordinance.

In re a Debtor; Ex parte Goldstein, [1917] 1 K.B. 558 followed.

Such an order may be rescinded if the proposed examination would be vexatious.

Appeal from an order of Deane J. directing examination of certain persons under section 31 of the Bankruptcy Ordinance.

The material facts and arguments sufficiently appear from the judgment below.

Roland Braddell for the examinees (appellants).
Mundell for the Official Assignee.

Cur. Adv. Vult.

Deane J.: This is an application to the Court to rescind an *ex parte* order made in this bankruptcy on 11th December, 1925, for the examination under section 31(1) of the Ordinance of Loh Kim Swee and Loh Kim Im concerning Loh Chuk Poh, the proprietor of the above-mentioned chops who was adjudicated a bankrupt on 27th February, 1914, his dealings and property and that the said Loh Kim Swee and Loh Kim Im do produce any documents in their custody or power relating to the dealings or property of the said bankrupt. The application is made under section 90(1) of the Ordinance which gives the Court power to review, rescind or vary any order made by it under the bankruptcy jurisdiction, and the case of *In re a* [85] *Debtor; ex parte Goldstein,* [85] [1917] 1 K.B. p. 558 establishes clearly that the applicants who feel themselves aggrieved thereby have adopted the proper procedure in moving the Court to rescind the order. In that case where the question was raised Shearman J. is reported as saying:

"The other question, namely, whether a person summoned for examination may appeal from the order when he is not a party to it, requires very short treatment. The whole practice of our Courts of Justice is permeated by the principle that if an order affecting any person is made *ex parte,* and he is aggrieved thereby, he does not appeal from the order, but comes before the Court with a summons or motion to set it aside. In the present case section 108 of the Bankruptcy Act, 1914 expressly provides that any order may be reviewed and rescinded or varied. The appellant was aggrieved; he took the proper course in applying to set aside the order by which he was aggrieved."

The application therefore to rescind must be considered on its merits.

Now section 31(1) of the Bankruptcy Ordinance under which the order for examination was made provides that the Court may on the application of the Official Assignee or any creditor summon before it any person whom the Court may deem capable of giving information respecting the bankrupt, his dealings or property; and it is contended by Mr. Mundell on behalf of the Official Assignee that this is a right given to the Official Assignee by Statute which will not be taken away unless the Court is satisfied that the proposed examinee cannot give information about those matters. The case of *In re Eckersley,* 48 L.J. p. 832 cited in support of this proposition does not seem to me to go so far as is suggested. It is true that in that case the Chief Judge in Bankruptcy is reported as saying:

"I am not at liberty to repeal that section of the Statute and when the Statute has plainly said that the trustee has the right to examine persons as therein directed I may not withhold from the Queen's subject that right which the law has given to them."

But these words have to be read with reference to the facts of that particular case. It was an appeal from a decision of the County Court Judge refusing an order to examine on the ground that when the professed object was to enable the trustee to go to some other Court the examination should not be held, and all that the Chief Judge meant was that when the Court

deemed the persons whom it was proposed to summon capable of giving information concerning the bankrupt, his dealings or property, it must grant the order irrespective of the use that might thereafter be made of the information acquired by it, but the essential preliminary to the giving of the order was not in any way touched; the Court had first to be satisfied that the proposed examinee was capable of giving information before it would grant the order. I agree that as a general rule an application made by the Official Assignee will be favourably considered by the Court for the very good reason that as a responsible officer of the Court having no personal interest in the matter it is presumed that he is only anxious to carry out the objects of the Bankruptcy Ordinance and obtain information that will be for the benefit of the bankrupt's estate without having any ulterior object in view, but the essential preliminary always remains, the Court must deem that the examinees can give the necessary information before it will make the order. On the hearing of this application however it is admitted on behalf of the Official Assignee that although he appears as the person who made the application on which the original order was granted, he did so only after obtaining a guarantee from one Suppiah Pillai, a creditor, for any costs that might be incurred in consequence. In view of this, therefore, although I have no doubt that the Official Assignee satisfied himself that there was something in the matter before allowing his name to be used as the applicant, yet perhaps he would have been stimulated to look more closely into the facts had he been spurred on by the apprehension of having to pay costs out of the estate in case of non-success, and probably the Court in its ignorance of that guarantee was more ready to grant him the order sought than it otherwise might have been.

The original application as amended set forth that Loh Kim Swee and Loh Kim Im (the proposed examinees) "are required to give evidence with regard to the sale of a rubber estate in which it is alleged the bankrupt had an interest, no part of the proceeds of which have been paid to the Official Assignee" and Mr. Mundell who appeared for the Official Assignee further particularised the information required. He stated as to the debtor, "I don't submit that the examinees are asked to give evidence about him, but the examinees can give evidence about property which was the debtor's property.

What the property is which the Official Assignee has in mind will appear from the affidavit of Suppiah Pillai. This affidavit sets out that the bankrupt, Loh Chuk Poh was at the time of his bankruptcy the sole proprietor of Chop Loh Chee Seng; that this chop had in partnership with one Loh Cheng Keng established two kongsies the object of which was to acquire and plant land in Sepang and Tanah Merah, and had in pursuance of that purpose developed two rubber estates called the Sepang and Tanah Merah estates; that these lands were registered in the joint names of Chop Loh Chee Seng and Loh Cheng Keng as representing these kongsies but were really held for and on behalf of the partners of the two kongsies in the following proportions; in one kongsi Chop Loh Chee Seng held 6 shares, Loh Cheng Keng the remaining 4 shares; in the other Chop Loh Chee Seng held 9½ shares, Loh Cheng Keng the remaining ½ share that Loh Cheng Keng managed the two estates till his death in 1899 after which his eldest son, Loh Kong Yew obtained letters of administration and [86] continued the management; that thereafter he and Chop Loh Chee Seng entered from time to time into various agreements the result of which was that in May, 1910 Chop Loh Chee Seng became entitled to 169 out of 200 shares in the said estates, the estate of Loh Cheng Keng being entitled to the other 31 shares; that in November, 1913, Mr. Wagner, solicitor, applied for and obtained registration in Selangor of ½ share in the Sepang estate in the respective names of Loh Chuk Poh as proprietor of Loh Chee Seng, and Loh Kong Yew as representative of the estate of Loh Cheng Keng and in the same month in Negri Sembilan he obtained registration of ½ share in the Tanah Merah estate in the name of Loh Chuk Poh; that in February, 1914 Loh Chuk Poh was made a bankrupt in Singapore; and in April, 1914, was also adjudicated a bankrupt in Kuala Lumpur, Messrs. Neill & Bell being appointed receivers of his property, that the receivers believing that the title deeds represented the true facts proceeded to sell the half shares in the Sepang and Tanah Merah estates which on the face of the grants represented the whole of the estate of Loh Chuk Poh to one Loh Ngai Poh, and that by the fraud contrived by Loh Kong Yew and Loh Chuk Poh the creditors of Loh Chuk Poh have thereby been deprived of the benefit of 69/200 shares in the said estates, which have gone to Loh Kong Yew as the representative of Loh Cheng Keng and subsequently by devolution to the proposed examinees. Now as to the subsequent dealing by the examinees with these 62/200 shares no fraud is alleged of any kind; the transactions appear in the Registry and the deponent, Suppiah Pillai himself states in his affidavit how the ½ share of Loh Kong Yew was subsequently disposed of and the consideration which the examinees received for their shares in it. Concerning these facts therefore the examinees cannot afford any information, of which the Official Assignee is not already in possession; and so it remains that the dealings of bankrupt Loh Chuk Poh with Loh Kong Yew with regard to these 62/200 shares in the estates are really the subject on which the Official Assignee requires to examine the examinees. Now there is really no definite reason stated in the affidavit from which the inference can be confidently drawn that the examinees knew anything of this alleged fraud; it is only suggested that inasmuch as they are the persons who have had the benefit of it they ought to be examined to see if they know anything of it; as I have already stated the fraud is alleged to have been perpetrated by their brother and the bankrupt and it is by no means a necessary inference although a possible one in the circumstances that they were cognisant of it. The reasons therefore for granting the original order were rather thin but in view of the documents quoted, the genuineness of which is not disputed, I do not feel that the Court would have been justified in refusing it.

[86]

The first ground on which the order is now attacked is that of jurisdiction so far as Loh Kim Im is concerned. The affidavit of Suppiah Pillai had stated that both the examinees were resident in Malacca and so within the jurisdiction; the counter-affidavit of Devasagaya Abasanam Pillai of Kuala Lumpur states, "I knew of my own personal knowledge that the said Loh Kim Im has resided in Kuala Lumpur for many years past and his present residence is No. 12 Kia Peng Road, Kuala Lumpur." The two affidavits are then in direct contradiction and cannot be reconciled as suggested by Mr. Mundell. It is not possible that at the time the affidavit of Suppiah Pillai was sworn Loh Kim Im was residing in Malacca if the other affidavit which states that he has been residing in Kuala Lumpur for many years past and is still residing there is to be believed. Mr. Braddell offered if necessary to supplement this latter affidavit by the evidence of Mr. Ivens but this was not done and in the absence of conclusive proof that the affidavit of Suppiah Pillai is untrue I would hesitate to cancel my order on that ground, but rather leave the point of jurisdiction to be settled if and when the question of no attendance in obedience to the order arose.

The substantial reason for objecting to the order is that the proposed examination would amount to an abuse of the process of the Court and ought not to be allowed. The grounds for this submission are in effect shortly as follows: That this application is a last step in a bitter litigation in the Federated Malay States and that the matter now sought to be reopened has in fact already been decided by a court of competent jurisdiction and is therefore a *res judicata;* or at any rate even if the matter is not a *res judicata* that the Court should not countenance further proceedings as being harsh and oppressive and an abuse of the process of the Court.

Now it may be said that the Official Assignee is not instituting any suit about which it may be argued that it is *res judicata,* he is merely asking to examine certain persons and therefore the objection cannot apply. This objection seems to me more specious than substantial. Section 31(1) of the Bankruptcy Ordinance is a highly inquisitorial section and the Legislature would never have passed such a section had it not looked upon it as a powerful engine for carrying out the main object of the Bankruptcy Ordinance, viz., to get in and realise the assets of the bankrupt for the benefit of his creditors. Any examination under the section must always have that end in view, and if it will not serve that end the Court in my opinion ought not to grant it. It is said that the Court will only consider that question when the application is by a creditor and that that rule does not apply to the Official Assignee, but I know of no authority for such a proposition; in every case the examination must be with a view to the benefit of the creditors. It follows therefore when allegations of fraud have been made by which the creditors have been deprived of their property that the only way in which the creditors could be benefited would be, if information were obtained from the examinees which would enable the Official Assignee to institute legal proceedings by which he could recover the amount come to the hands of the examinees [87] by reason of this fraud which otherwise would have gone towards payment of the bankrupt's debts. [87]

Now I find that in Civil Suit No. 36 of 1917 of the Federated Malay States a suit brought by one Loh Chee Yan who alleged that he was a partner in Chops Loh Kee Seng and Loh Chee Seng against Loh Kong Yew and Loh Ngai Poh the question as to the shares owned by Loh Chuk Poh and Loh Cheng Keng in these same two estates was one of the material issues; the particulars of the alleged fraud are set out in paragraph 50(a) of the Statement of Plaint and are as follows:—

> "The first defendant knowing that he had no beneficial interest in the said lands, but that such lands belonged to Loh Chee Seng and with the object of fraudulently securing to himself ½ of the beneficial ownership of such land, conspired with the said Loh Chuk Poh in standing by and allowing the Registrar of Titles to be deceived into the belief that the name Loh Chee Seng was an individual and another name for Loh Poh Shan deceased, whereby the name of the said Loh Chuk Poh was entered on the register as proprietor of ½ share in the said lands as representative of Loh Chee Seng deceased."

This of course is practically the same allegation of fraud as we have now except that here the first words would run, "The first defendant (Loh Kong Yew) knowing that he had only a 31/200 share in the said lands and that 169/200 share of such lands belonged to Loh Chee Seng &c.,"; the plaintiff's case being in Suit No. 36 of 1917 that Loh Cheng Keng had no interest of any kind in the estates being only a manager.

There were also other allegations of fraud affecting the 2nd defendant, Loh Ngai Poh who it will be remembered was the purchaser of Loh Chuk Poh's ½ share in the estates from the Official Assignee.

In his judgment Earnshaw J. dealing with the allegation of fraud said:

> "I find that no fraud is proved on the part of the purchaser, i.e., the second defendant in that transaction. Under section 8 therefore of the Registration of Titles Enactment the defendant, Loh Ngai Poh has a title as registered proprietor to the land which is not subject to challenge even if the plaintiff has any right whatever to sue him. There is no evidence of any secret or concealed transaction such as would bring it within the reasoning of the judgment in the case of *Adam* v. *Sworder,* 2 D.J. & S., p. 44 and the passage quoted by the plaintiff's counsel from *Kerr* on Fraud, 4th ed., p. 139: No fraud has been proved in this suit against Loh Ngai Poh either in that transaction or in the previous transactions by which Loh Chuk Poh became the registered proprietor of the land.
>
> *Mutatis mutandis* the same may be said of the title of the first defendant, Loh Kong Yew. No fraud to which he was in any way a party has been proved. I see no ground for making any order against him. He has a good title to the property as registered proprietor and there is no such evidence before me as to convince me that either he or his father through whom he acquired the property is or was guilty of any fraud in connection therewith."

But it has been said the Official Assignee was no party to this case, he could not be since it impeached his own sale of the ½ share of Loh Chuk Poh through the receivers to Loh Ngai Poh, and he could not have joined in a case in which he did not believe, where it was alleged that Loh Cheng Keng had no interest at all and where the plaintiff's claim to be a partner in Loh Chee Seng was severely commented on by the

learned Judge. There is much force in this objection and I do not find fault with the Official Assignee for refusing to be joined as a plaintiff, but when the application to join him as plaintiff was made by the plaintiff the Official Assignee of course had brought to his notice this alleged fraud between Loh Chuk Poh and Loh Kong Yew and it was his duty if he believed the creditors had been defrauded thereby whether of ½ share in the estate or of 69/200, to take steps to protect their interests. All the documents on which reliance was placed and which could be proved were produced in the case and the fact that he did nothing from 12th October, 1917 to January, 1921 and was content with this declaration of Earnshaw J. concerning Loh Kong Yew, "I see no ground for making any order against him. He has a good title to the property as registered proprietor and there is no such evidence before me as to convince me that either he or his father through whom he acquired the property is or was guilty of any fraud in connection therewith" is to my mind conclusive proof that the Official Assignee with full knowledge of the facts before him did not think it worth while for over three years to take action to recover this 69/200 part of the estates.

Civil Suits 17 of 1918, 63 of 1919 and 259 of 1919 followed in which various members of the Loh family brought actions against Loh Kong Yew with regard to the ½ share in the estate.

Civil Suit 17 of 1918 was struck out on plaintiff failing to find the security ordered by the Court; what happened to the other two will appear later.

In January 1921 Civil Suit 4 of 1921 was instituted in the Supreme Court of Kuala Lumpur in which the Official Assignee acting through his agents the Kuala Lumpur receivers of the estate of Loh Chuk Poh brought an action against Loh Kim Swee and Loh Kim Im the proposed examinees and Khong Ah Choy co-executor with Loh Kim Swee of the will of Loh Kong Yew, in which the same fraud was alleged against Loh Kong Yew and Loh Chuk Poh as had been alleged in Civil Suit 36 of 1917 with the modification that it was now said that Loh Cheng Keng had 31/200 shares in the estate. Exactly the same fraud in fact as is now alleged against them in the affidavit of Suppiah Pillai.

By an order dated 20th April, 1921 Suits 63 of 1919 and 259 of 1919 were stayed until final judgment in Administration Suit 3 of 1918, and the receivers of the property of Loh Chuk Poh were ordered to be
[88] joined as defendants in Civil [88] Suit 259 of 1919 and the plaint amended accordingly. The plaintiffs in Suits 63 of 1919 and 259 of 1919 made no attempt to carry this order into effect and their solicitors on 7th October, 1924 in reply to a letter from defendants intimated that they were not proceeding with the actions. The cases were then put down on the hearing list by defendants and were dismissed with costs. In July, 1925 one Loh Kong Mo on behalf of Loh Kuan Shim alleged to be a member of the Loh family made an application to have the dismissal orders set aside, but his application was dismissed with costs.

Meanwhile what of the Official Assignee's suit? On 14th July, 1921 defendants delivered certain interrogatories; they could get no answer to them. On 23rd July, 1924 more than three years after the defendant's solicitors wrote to them requiring the interrogatories to be answered; plaintiffs then wrote asking for a further delay of six weeks; this was refused, the matter was brought before the Court and on 1st September, 1924 an order was made by the Chief Judicial Commissioner that the interrogatories should be answered before 1st Ooctober, 1924 failing which the action should stand dismissed with costs. On 2nd October the action came on for hearing before the Honourable the Acting Chief Judicial Commissioner in the presence of Mr. P. B. Ford for plaintiffs and Mr. F. B. Ivens for the defendants and it was ordered that the suit be dismissed with costs to be paid out of the estate of the insolvent.

Now if there is one thing clear on these facts it is that the question of this alleged fraud has been thoroughly ventilated already in the Courts of the country where the land with which it was concerned is situated, where the fraud is alleged to have been perpetrated and where the parties resided at the time it was said to have been committed. The judicial decision of a Court of any part of His Majesty's Dominions is conclusive in the Courts of any other part. If this order of the Court on 2nd October, 1924 dismissing the action by the Official Assignee is conclusive and operates as an estoppel to the same question being again litigated, this Court must take notice of it. What is a *res judicata* is a very difficult question to decide, since a case may be dismissed for many reasons. In this case counsel for the Official Assignee argues that the case having been dismissed because the plaintiffs failed to answer the interrogatories, the substantial issues in the action must be taken as still undecided. Counsel for the examinees on the other hand states that as the plaintiffs in the suit knew that the answers to the interrogatories would disclose that their claim to relief was statute-barred, the Official Assignee having had notice of the alleged fraud for over three years they were forced to submit to judgment. I think myself the true test to apply is, did the plaintiffs submit to a judgment with a view of thereby putting an end to the proceedings? If they did if they had a chance of putting their case, deliberately refrained from doing so and submitted to judgment, that is a bar to further proceedings by them. (*Hopkins* v. *Hopkins*, [1914] P. 282). Now the case was brought in January, 1921: interrogatories administered in July, 1921, order for dismissal made in October, 1924. In the face of these dates can it be fairly contended that plaintiffs were serious in prosecuting this action or that their submission to judgment can be taken as anything but a deliberate abandonment of the action? Suppiah Pillai in his affidavit in support of the order states, "The receivers did not prosecute the said suit with any diligence and in the month of October, 1924 on the application of the defendants, the said receivers not objecting the Supreme Court at Kuala Lumpur dismissed the suit." I find that as a result of this dismissal the plaintiffs are debarred from litigating again the question of fraud; and that Loh Chuk Poh has no property about which he can be examined.

But if I am wrong that the dismissal of Suit 4 of 1921 estops the plaintiffs from further proceedings with regard to these matters, I think that this is a case

where the inherent jurisdiction of the Court to prevent its process being abused so as to cause hardship and injustice ought to be exercised in favour of the examinees.

Consider first the staleness of these proceedings; Loh Chuk Poh was declared bankrupt in 1914, he absconded, but Loh Kong Yew was alive up to the year 1920. No application was made by the Official Assignee to examine him all those six years although he was available and could easily have been got at by the receivers in Kuala Lumpur; now for the first time nearly 12 years later application is made to examine persons simply because they are in possession of the property which it is alleged he acquired by fraud, no clear proof being forthcoming that they knew anything at all of the alleged fraud. Then in 1917 the Official Assignee hears all about this fraud and is asked to become a party to an action in which it is set up; he refuses and it is only in 1921 when it is alleged at the Bar that a creditor called Koomarasamy guaranteed his costs that he allowed Action 4 of 1921 to be brought through his agents, in which practically the same fraud as had been set up in 1917 was made the ground for the action. There had been a clear finding that no such fraud had been perpetrated in the judgment of Earnshaw J. in Action of 1917, and the Official Assignee after nearly four years' further inaction submits to judgment going against him and entered no appeal against the judgment. Now fortified once again by a guarantee of costs he allows this summons to be taken out. I have no hesitation in saying that in my opinion it would be doing a grave injustice to these parties if I did not cancel the order for examination made against them. In *Stephenson* v. *Garnett*, L.R. [1898] 1 Q.B. p. 677, where on an interlocutory application to tax costs the County Court Judge had decided that a deed under which a defendant had been released from the judgment and costs had been obtained by misrepresentation and the defendant subsequently brought an action in the High Court for a declaration that he had been released, it was held that as the question raised in the [89] action was [89] identical with that decided by the County Court Judge upon the interlocutory application to tax costs and had been decided by a Court of competent jurisdiction the action ought to be stayed as frivolous and vexatious and an abuse of the process of the Court. All three Judges who sat in the case were of opinion that although the case could not strictly be said to be a *res judicata* yet the County Court Judge having decided the question in a proceeding where he had jurisdiction to determine it, the Court should use its inherent power to prevent the same question being again litigated before it.

There must be some limit to litigation and the examinees are entitled to the protection of the Court from frivolous and vexatious proceedings, which can only have a meaning as laying the foundation of further litigation on matters which have been decided again and again by Courts of competent jurisdiction.

For these reasons I order that my first order for the examination of Loh Kim Swee and Loh Kim Im be rescinded.

The Official Assignee must pay the costs of these proceedings.

Appeal allowed.

Solicitors: *Braddell Bros.; Sisson & Delay.*

Re F. A. HENDRICKS

[(O.C.J. (Gordon-Smith J.) January 3, 1936]
[Malacca Bankruptcy No. 12 of 1934]

Pensions Ordinance (1928), s.20 — Gratuity — Ordinance No. 44 (Bankruptcy), ss.47 and 94.

A gratuity granted by the Governor-in-Council under section 20 of the Pensions Ordinance (1928) to the legal personal representative of an officer in the Government Service who was an undischarged bankrupt is payable to the Official Assignee.

Re R. E. Smith, [1936] M.L.J. 83 (*supra*, p. 65) followed, and *Re Mahomed Ariff*, [1926] S.S.L.R. 166 not followed.

MOTION IN THE BANKRUPTCY.

Taylor (Official Assignee) in person.

Goh Tiow Wan for the respondent.

The facts and arguments are sufficiently set out in the judgment.

Cur. Adv. Vult.

Gordon Smith J.: This was a motion by the Official Assignee for a declaration that the sum of $1,560 being the gratuity grantable by the Governor-in-Council under section 20 of the Pensions Ordinance (1928) to the legal personal representatives of the above-named F. A. Hendricks, a bankrupt, is payable to the Official Assignee of the property of the bankrupt.

On the 11th May, 1934 the said F. A. Hendricks, who was a dresser employed at the Malacca General Hospital, was adjudicated a bankrupt and was an undischarged bankrupt at the date of his death which occurred on the 6th January, 1935.

In accordance with section 20 of the Pensions Ordinance (1928), the Governor-in-Council on the 28th March, 1935 granted a gratuity of $1,560 to his legal representatives this amount being the equivalent of one year's pensionable emoluments.

This sum is claimed by the Official Assignee on behalf of the creditors in the bankruptcy and is also claimed for her own use and benefit absolutely by Nancy Hendricks, a sister of the deceased who is the sole surviving next-of-kin and to whom letters of administration were granted on the 2nd November, 1935, through her attorney, Joseph Pereya.

Section 20 of the Pensions Ordinance (1928) reads:—

> "When an officer holding a pensionable office, who is not serving on probation or agreement dies, while in the service of the Colony, it shall be lawful for the Governor-in-Council to grant to his legal personal representative a gratuity of an amount not exceeding one year's pensionable emoluments."

Section 16 of the same Ordinance which is also relevant reads:—

> "No pension, gratuity or other allowance granted under this Ordinance shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever, other than a debt due to the Government."

It might also be noted that by section 4 of the Ordinance, pensions and gratuities are charged on and are paid out of the general revenues of the Colony.